

Historic, archived document

Do not assume content reflects current scientific knowledge, policies, or practices.



ccerve

7345

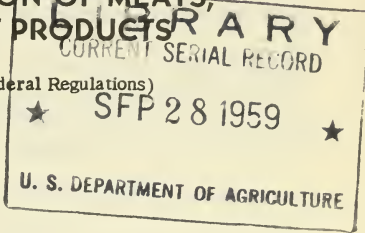
UNITED STATES DEPARTMENT OF AGRICULTURE

AGRICULTURAL MARKETING SERVICE

Service and Regulatory Announcements No. 98 (Revised)

RULES AND REGULATIONS OF THE DEPARTMENT OF AGRICULTURE GOVERNING THE GRADING AND CERTIFICATION OF MEATS, PREPARED MEATS, AND MEAT PRODUCTS

(Title 7, Ch. I, SubCh. C, Pt. 53 of the Code of Federal Regulations)



CONTENTS

	Page		Page
Definitions -----	1	Service Generally--Continued	
53.1 Meaning of words -----	1	53.16 Official certificates -----	11
53.2 Designation of official certificates, memoranda, marks, other identifications, and devices for purposes of the Agricultural Marketing Act -----	3	53.17 Advance information concerning service rendered -----	13
Administration -----	3	53.18 Marking of products -----	13
53.3 Authority -----	3	53.19 Official identifications -----	13
Service Generally -----	4	53.20 Custody of identification devices -----	14
53.4 Kind of service -----	4	Appeal Service -----	14
53.5 Availability of service -----	4	53.21 What is appeal service; marking products on appeal; requirements for appeal; certain determinations not appealable -----	14
53.6 Recognition of non-Federal meat inspection systems; withdrawal of recognition -----	4	53.22 Request for appeal service -----	15
53.7 Survey and recognition of non-federally inspected establishments; withdrawal of recognition -----	7	53.23 When request for appeal service may be withdrawn -----	15
53.8 How to obtain service -----	8	53.24 Denial or withdrawal of appeal service -----	15
53.9 Order of furnishing service -----	9	53.25 Who shall perform appeal service -----	15
53.10 When request for service deemed made -----	9	53.26 Appeal certificates -----	16
53.11 Withdrawal of application or request for service -----	9	53.27 Superseded certificates -----	16
53.12 Authority of agent -----	9	53.28 Application of other regulations to appeal service -----	16
53.13 Denial or withdrawal of service -----	9	Charges for Service -----	16
53.14 Financial interest of official grader -----	11	53.29 Fees and other charges for service -----	16
53.15 Accessibility and refrigeration of products; access to establishments -----	11	53.30 Payment of fees and other charges -----	18
		Miscellaneous -----	18
		53.31 Identification -----	18
		53.32 Errors in service -----	18

The following rules and regulations were issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.) and provisions of the annual Department of Agriculture appropriation acts.

DEFINITIONS

53.1 Meaning of words.--Words used in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand. For the purposes of such regulations, unless the context otherwise requires, the following terms shall be construed, respectively, to mean:

(a) The Act.--The Agricultural Marketing Act of 1946 (Title II of the act of Congress approved August 14, 1946, 60 Stat. 1087, as amended by Pub. Law 272, 84th Cong., 69 Stat. 553, 7 U.S.C. 1621-1627).

(b) The regulations.--The regulations in this subpart.

(c) Department.--The United States Department of Agriculture.

(d) Agricultural Marketing Service. The Agricultural Marketing Service of the Department.

(e) Administrator.--The Administrator of the Agricultural Marketing Service, or any officer or employee of the Agricultural Marketing Service to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(f) Division.--The Livestock Division of the Agricultural Marketing Service.

(g) Director.--The Director of the Division, or any officer or employee of the Division to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(h) Branch.--The Meat Grading Branch of the Division.

(i) Chief.--The Chief of the Branch, or any officer or employee of the Branch to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(j) Official grader.--An employee of the Department authorized to determine and certify or otherwise identify the class, grade, other quality, or compliance of products under the regulations.

(k) Supervisor of grading.--An official grader or other person designated by the Chief to supervise and maintain uniformity and accuracy of service under the regulations.

(l) Office of grading.--The office of an official grader.

(m) Person.--Any individual, partnership, corporation, or other legal entity, or Government agency.

(n) Financially interested person. Any person having a financial interest in the products involved, including but not limited to the shipper, receiver, or carrier of the products.

(o) Applicant.--Any person who has applied for service under the regulations.

(p) Grading service.--The service established and conducted under the regulations for the determination and certification or other identification of the class, grade, or other quality of products under standards.

(q) Acceptance service.--The service established and conducted under the regulations for the determination and certification or other identification of the compliance of products with specifications.

(r) Service.--Grading service or acceptance service.

(s) Class.--A subdivision of a product based on essential physical characteristics that differentiate between major groups of the same kind of species.

(t) Grade.--(1) As a noun, this term means an important commercial subdivision of a product based on certain definite and pref-

erence determining factors, such as conformation, finish, and quality in meats.

(2) As a verb, this term means to determine the class, grade, or other quality of a product according to applicable standards for such product in Subpart B of this part.

(u) Quality.--A combination of the inherent properties of a product which determine its relative degree of excellence.

(v) Compliance.--Conformity of a product to the specifications under which the product was purchased or sold, with particular reference to its quality, cleanliness, state of refrigeration, method of processing, and trim.

(w) Standards.--The standards of the Department contained in Subpart B of this part.

(x) Specifications.--Descriptions with respect to the class, grade, other quality, quantity or condition of products, approved by the Administrator, and available for use by the industry regardless of the origin of the descriptions.

(y) Products.--Meats, prepared meats, meat by-products, or meat food products.

(z) Animals.--Cattle, sheep, swine, or goats.

(aa) Carcass.--The commercially prepared or dressed body of any animal intended for human food.

(bb) Meat.--The edible part of the muscle of an animal, which is skeletal, or which is found in the tongue, in the diaphragm, in the heart, or in the esophagus, and which is intended for human food, with or without the accompanying and overlying fat and the portions of bone, skin, sinew, nerve, and blood vessels which normally accompany the muscle tissue and which are not separated from it in the process of dressing. This term does not include the muscle found in the lips, snout, or ears.

(cc) Prepared meats.--The products intended for human food which are obtained by subjecting meat to drying, curing, smoking, cooking, grinding, seasoning, or flavoring, or to any combination of such procedures, and to which no considerable quantity of any substance other than meat or meat by-products has been added.

(dd) Meat by-products.--All edible parts (other than meat and prepared meats) intended for human food, derived from one or more animals, and including but not limited to such organs and parts as livers, kidneys, sweetbreads, brains, lungs, spleens, stomachs, tripe, lips, snouts, and ears.

(ee) Meat food products.--Any articles intended for human food (other than meat, prepared meats, and meat by-products) which are derived or prepared, in whole or in substantial and definite part, from any portion of any animal, except such articles as organotherapeutic substances, meat juice, meat extract, and the like, which are only for medicinal purposes and are advertised only to the medical profession.

(ff) Processing.--Drying, curing, smoking, cooking, seasoning, or flavoring or any combination of such processes, with or without fabricating.

(gg) Fabricating.--Cutting into wholesale or retail cuts, or dicing or grinding.

(hh) Immediate container.--The carton, can, pot, tin, casing, wrapper, or other receptacle or covering constituting the basic unit in which products are directly contained or wrapped when packed in the customary manner for delivery to the meat trade or to consumers.

(ii) Shipping containers.--The receptacle or covering in which one or more immediate containers of products are packed for transportation.

(jj) Cooperative agreement.--A coop-agreement between the Agricultural Marketing Service and another Federal agency or a State agency, or other agency, organization or person as specified in the Agricultural Marketing Act of 1946, as amended, for conducting the service.

(kk) Federal meat inspection.--The meat inspection system conducted under the Meat Inspection Act, as amended (21 U.S.C. 71 et seq.) and the import meat provisions of the Tariff Act (19 U.S.C. 1306 (b) and (c)), and the regulations thereunder (9 CFR Parts 1-28, as amended).

53.2 Designation of official certificates, memoranda, marks, other identifications, and devices for purposes of the Agricultural Marketing Act.--Subsection 203(h) of the Agricultural Marketing Act of 1946, as amended by Public Law 272, 84th Congress, provides criminal penalties for various specified offenses relating to official certificates, memoranda, marks or other identifications, and devices for making such marks or identifications, issued or authorized under section 203 of said act, and certain misrepresentations concerning the inspection or grading of agricultural products under said section. For the purposes of said subsection and the provisions in this part, the terms listed below shall have the respective meanings specified:

(a) "Official certificate" means any form of certification, either written or printed, including that prescribed in sec. 53.16, used under the regulations to certify with respect to the inspection, class, grade, quality, size, quantity, or condition of products (including the compliance of products with applicable specifications).

(b) "Official memorandum" means any initial record of findings made by an authorized person in the process of grading, determining compliance, inspecting, or sampling pursuant to the regulations, any processing or plant-operation report made by an authorized person in connection with grading, determining compliance, inspecting, or sampling under the regulations, and any report made by an authorized person of services performed pursuant to the regulations.

(c) "Official mark" or "other official identification" means any form of mark or other identification, including those prescribed in sec. 53.19, used under the regulations in marking any products, or the immediate or shipping containers thereof, to show inspection, class, grade, quality, size, quantity, or condition of the products (including the compliance of products with applicable specifications), or to maintain the identity of products for which service is provided under the regulations.

(d) "Official device" means any roller, stamp, brand or other device used under the regulations to mark any products, or the immediate or shipping containers, thereof, with any official mark or other official identification.

ADMINISTRATION

53.3 Authority.--The Chief is charged with the administration, under the general supervision and direction of the Director, of the regulations and the Act insofar as it relates to the subject matter of the regulations.

SERVICE

53.4 Kind of service.--Grading service under the regulations shall consist of the determination and certification and other identification, upon request by the applicant, of the class, grade, or other quality of products under applicable standards in Subpart B of this part. Class, grade, and other quality may be determined under said standards for meat of cattle, sheep, or swine in carcass form or for wholesale cuts of such meat other than pork wholesale cuts. Acceptance service under the regulations shall consist of the determination of the conformity of products to specifications approved by the Chief and the certification and other identification of such products in accordance with the specifications, upon request by the applicant. Determination as to compliance with specifications for ingredient content or method of preparation may be based upon information received from the inspection system having jurisdiction over the products involved.

53.5 Availability of service.--Service under the regulations may be made available under a cooperative agreement with respect to products shipped or received in interstate commerce, and with respect to products not so shipped or received if the Chief determines that the furnishing of service for such products would facilitate the marketing, distribution, processing, or utilization of agricultural products through commercial channels. Subject to sec. 53.6(a)(1)(iv), service will be furnished for products only if they were derived from animals slaughtered in accordance with Federal meat inspection requirements, or at establishments recognized under sec. 53.7 and operated under some official meat inspection system recognized under sec. 53.6, and if any processing and fabricating of the products were done in accordance with such requirements or at such establishments.

53.6 Recognition of non-Federal meat inspection systems; withdrawal of recognition.--(a) Conditions of recognition.--Non-Federal meat inspection systems will be recognized by the Chief for the purpose of sec. 53.5 only if they are established under the authority of laws, ordinances, or similar provisions of a State, county, city, or other political subdivision; if the inspection is conducted by qualified inspectors who are veterinarians (or who are supervised by qualified veterinarians), who are employed, assigned, and paid for their work as such inspectors, only by an agency of the State, county, city or other political subdivision conducting the meat inspection service, and who perform no work in or for an establishment operated under the meat inspection system other than in their official capacities; if such laws, ordinances or similar provisions are consistent with the following applicable requirements; if such meat inspection systems are willing to enforce such requirements with respect to the establishments under their jurisdiction applying for recognition under sec. 53.7; and if such requirements are enforced in a manner satisfactory to the Chief:

(1) Requirements for slaughtering establishments.--The following requirements shall be applicable to establishments where any animals are slaughtered for preparation as products for which grading or acceptance service is desired under the regulations:

(i) Except as provided in (iv) and (v) the inspection of slaughtering operations shall include ante-mortem and post-mortem inspections.

(ii) Ante-mortem inspection of each animal shall be made immediately prior to slaughter for the purpose of eliminating all unfit

animals and segregating, for more thorough examination, all animals suspected of being affected with a condition which might influence their disposition on post-mortem inspection. The unfit animals shall not be permitted to enter the slaughtering department of the establishment, and the suspected animals shall not be permitted to enter the slaughtering department until they have been found by veterinary inspection to be fit for slaughter. The suspected animals that are permitted to be slaughtered shall be handled separately and apart from the regular kill and shall be given a special post-mortem examination.

(iii) The post-mortem examination shall be made at the time the animals are slaughtered. The inspectors shall examine the cervical lymph glands, the skeletal lymph glands, the viscera and organs with their lymph glands, and all exposed surfaces of the carcasses of all animals. Such examination shall be conducted in the slaughtering department of the establishment (at the time of evisceration) during the slaughtering operations and shall not be conducted on a spot-check basis.

(iv) Carcasses of cattle, sheep, swine, and goats, slaughtered by a farmer on the farm, may be received for inspection at recognized establishments where there is a veterinary meat inspector, if the head and all viscera other than the stomach, bladder, and intestines of such carcasses are held by the natural attachments. Every such carcass shall be given a thorough post-mortem examination. If, on inspection of any such carcass, there is found any lesion or other condition indicating that the animal was diseased, the carcass shall be condemned and disposed of as provided in subdivision (vi) of this subparagraph. If on inspection the carcass is found to be free from disease and otherwise fit for human food, it may be passed for food purposes.

(v) When it is necessary for humane reasons to slaughter an injured animal at night or on Sunday or a holiday when the inspector cannot be obtained, the carcass and all parts shall be kept for inspection, with the head and all viscera except the stomach, bladder, and intestines held by the natural attachments. If all parts are not so kept for inspection, the carcass shall be condemned. If an inspection of a carcass slaughtered in the absence of an inspector any lesion or other condition is found indicating that the animal was diseased, or if there is lacking evidence of the condition which rendered emergency slaughter necessary, the carcass shall be condemned and disposed of as provided in subdivision (vi) of this subparagraph. Otherwise the carcass may be passed for food purposes if on inspection it is found to be fit for human consumption.

(vi) All carcasses and parts of carcasses, including the viscera, found to be diseased or otherwise unfit for human food shall be condemned and removed from the slaughtering department of the establishment in equipment designated for the purpose and shall be destroyed for food purposes under the supervision of an inspector. The disposition of all such carcasses and parts thereof, including the viscera, shall be under the control of a veterinary inspector.

(vii) Each carcass and part thereof which has been inspected and passed shall be marked at the time of inspection with a mark assigned by and identifying the State, county, city, or other political subdivision. Such marking shall be done under the supervision of the inspector and the marking device shall be in the custody of the inspector at all times.

(2) Requirements for processing establishments.--The following requirements shall be applicable to establishments processing products for which acceptance service is desired under the regulations. At least daily inspection shall be made at each establishment to assure:

(i) That all processing operations are being conducted in a clean and sanitary manner;

(ii) That all products processed are clean and wholesome;

(iii) That products processed or fabricated, or derived from animals slaughtered, at plants in the United States that are not federally inspected or approved by the Chief are not permitted to enter the establishment, except as provided in paragraph (a)(1)(iv) of this section;

(iv) That the inspectors shall be able to certify to the Agricultural Marketing Service the ingredient content and the manner of preparation of all products processed. In addition, the requirements of subparagraph (1) of this paragraph shall be applicable to establishments within this subparagraph which also conduct slaughtering operations whether or not the products processed at such establishments are derived from the animals slaughtered.

(3) Requirements for fabricating establishments.--Establishments fabricating products for which grading or acceptance service is desired under the regulations shall meet the requirements of subparagraph (4) of this paragraph.

(4) General requirements for all establishments and premises.--The following requirements shall be applicable to all establishments within subparagraph (1), (2), or (3) of this paragraph.

(i) The establishment as a whole and its facilities shall be well constructed, properly fitted and equipped for the purpose used, and so maintained that all products prepared therein will be clean and otherwise sound, healthful, wholesome, and fit for human food. The floors of the establishment shall be smooth and impervious and sloped so as to drain freely and rapidly to sewer connections. Walls and pillars in the slaughtering department, if any, must be tight, smooth, and free from crevices. All parts of the slaughtering department, if any, and other departments of the establishment in which products are processed, fabricated, or otherwise handled or stored shall be kept clean, and all of the operations in such departments shall be conducted in a clean and sanitary manner. Facilities shall be provided for the cleaning and sterilization of tools, utensils, and other equipment. All equipment used in the establishment shall be made of such materials and be so constructed as to be readily and thoroughly cleaned and shall be kept clean and in a sanitary condition. Contaminated equipment shall be promptly cleaned and sterilized. Rooms used for condemned products, inedible offal, hides, and other materials and supplies likely to contaminate products or render products inedible shall be completely partitioned from edible product departments, except for one aperture to the slaughtering department if there is one. This aperture shall be equipped with a close-fitting door and shall be of sufficient size to allow ready and free passage of materials designated as unfit for human food and all equipment used therewith.

(ii) Drainage and sewage disposal shall be adequate to maintain the establishment and premises in a sanitary condition.

(iii) Ventilation shall be sufficient to insure that the atmosphere in rooms where products are kept is free from obnoxious odors emanating from inedible product tanks, offal rooms, catch basins,

toilet rooms, hide cellars, refuse heaps, livestock pens, and similar sources. Lighting shall be adequately maintained in all rooms of the establishment.

(iv) The establishment shall be provided with ample supplies of potable hot and cold water and steam, with outlets conveniently located and equipped with faucets for hose connections, for ready use during slaughtering, processing, or fabricating operations and for cleaning. Wash basins equipped with running hot and cold water, soap, and towels shall be placed in or near the dressing rooms and at such other places in the establishments as may be necessary to insure cleanliness of all persons handling products. Water for sterilizing purposes shall be maintained at a temperature of at least 180° F.

(v) Toilet rooms shall not communicate directly with any room in which animals are killed or products are processed, fabricated, otherwise handled, or stored. Dressing room facilities shall be adequate in size, convenient, equipped properly, and kept clean.

(vi) All departments in the establishment shall have adequate protection against flies, rodents, and other vermin. However, the use of poisons for any purpose in rooms or compartments where any unpacked products are processed, fabricated, otherwise handled, or stored is forbidden except under such restrictions and precautions as the chief veterinary inspector in charge of inspection at the establishment may require. So-called rat viruses shall not be used in any part of the establishment or its premises.

(vii) Barnyards stock pens, runways, unloading docks, and other facilities appurtenant to the establishment shall be kept clean. No nuisance shall be allowed on the premises, such as fly breeding places, dead stock, rat or cockroach infestation, rubbish heaps, decomposing animal material, polluted water supply, or insanitary drainage disposal.

(b) Withdrawal of recognition.--The Chief may at any time, without hearing, withdraw the recognition of any nonfederal meat inspection system recognized under paragraph (a) of this section if he finds that the laws, ordinances or similar enactments authorizing the system are not consistent with the applicable requirements prescribed in said paragraph or that the system has failed to take reasonable measures to assure that the applicable requirements are enforced in every respect in a satisfactory manner at each establishment recognized under sec. 53.7. Upon such withdrawal the recognition under sec. 53.7 of all establishments operating under said system shall be automatically terminated.

53.7 Survey and recognition of nonfederally inspected establishments; withdrawal of recognition.

(a) Conditions of recognition.--Recognition will be given by the Chief for the purposes of sec. 53.5 to a nonfederally inspected establishment only if it is operated in accordance with the applicable requirements of sec. 53.6(a) under a meat inspection system recognized under sec. 53.6 and is otherwise eligible for recognition. A survey will be made to determine the eligibility for recognition under the regulations of any nonfederally inspected establishment preparing products for which an application for service is made.

(b) Withdrawal of recognition.--(1) The Chief may at any time, without hearing, withdraw his recognition of any nonfederally inspected establishment when he finds that the operator of the establishment or any other person conducting slaughtering, processing, or fabricating operations at the establishment has failed to comply

with the applicable requirements under sec. 53.6. Recognition will not be restored to such establishment until it has been demonstrated for at least 30 days after application is made for reinstatement of the recognition of such establishment that the establishment is being operated in accordance with the applicable requirements under sec. 53.6. For each subsequent withdrawal of recognition under this subparagraph, the minimum period of withholding of recognition shall be the same as the prior period of withholding, plus an additional 30 days.

(2) The Chief may at any time, without hearing, withdraw his recognition of any nonfederally inspected establishment when he finds that, for a period of 60 consecutive days, no request has been made for service for products prepared at such establishment.

(c) Resurvey requirements.--Whenever recognition of an establishment is terminated or withdrawn under sec. 53.6 of this section, or service at a recognized establishment is denied or withdrawn under sec. 53.13(a), a resurvey of the establishment under paragraph (a) of this section may be required before restoration of recognition or service.

53.8 How to obtain service.

(a) Application. Any person may apply to the Chief for service under the regulations with respect to products in which the applicant is financially interested. The application shall be made on a form approved by the Director, and if the service is intended to be furnished with respect to products processed or fabricated, or derived from animals slaughtered, at a nonfederally inspected establishment in the United States, the application shall also include such other form as is approved by the Director for purposes of determining the eligibility of such establishment for recognition under sec. 53.7. If such nonfederally inspected establishment is not operated by the applicant for service, the application shall be approved by the operator and he shall thereby be deemed to request recognition for his establishment and to agree to pay for surveys made, in accordance with sec. 53.29(e), if the applicant does not pay therefor. In any case in which the service is intended to be furnished at an establishment not operated by the applicant, the application shall be approved by the operator of such establishment and such approval shall constitute an authorization for the entry of the establishment by any employees of the Department for the purpose of performing their functions under the regulations. The application shall state (1) the name and address of the establishment at which service is desired; (2) the name and post office address of the applicant; (3) the financial interest of the applicant in the products, except where application is made by an official of a government agency in his official capacity; (4) the signature of the applicant (or the signature and title of his representative); and such other information as may be required by the Chief to determine the eligibility of the applicant for service. The application shall indicate the legal status of the applicant as an individual, partnership, corporation, or other form of legal entity. Any change in such status at any time while service is being received shall be promptly reported to the Chief by the person receiving the service.

(b) Notice of eligibility for service.--The applicant for service at any establishment will be notified whether his application is approved.

(c) Request by applicant for service--(1) Noncommitment.--Upon notification of the approval of an application for service, the

applicant may, from time to time as desired, make oral or written requests for service under the regulations with respect to specific products for which the service is to be furnished under such application. Such requests shall be made at an office of grading either directly or through any employee of the Agricultural Marketing Service who may be designated for such purpose.

(2) Commitment.--If desired, the applicant may enter into an agreement with the Agricultural Marketing Service for the furnishing of service on a weekly commitment basis, whereby the applicant agrees to pay for 40 hours of service per week as provided in sec. 53.29(b) and the Agricultural Marketing Service agrees to make an official grader available to perform such service for the applicant. However, the Agricultural Marketing Service reserves the right to use any grader assigned to a plant under such a commitment to perform service for other applicants when in the opinion of the Chief he is not needed to perform service for the applicant.

53.9 Order of furnishing service.--Service under the regulations shall be furnished to applicants in the order in which requests therefor are received, insofar as consistent with good management, efficiency and economy. Precedence will be given, when necessary, to requests made by any government agency or any regular user of the service, and to requests for appeal service under sec. 53.22.

53.10 When request for service deemed made.--A request for service under the regulations shall be deemed to be made when received by an office of grading. Records showing the date and time of the request shall be made and kept in such office.

53.11 Withdrawal of application or request for service.--An application or a request for service under the regulations may be withdrawn by the applicant at any time before the application is approved or prior to performance of service, upon payment, in accordance with secs. 53.29 and 53.30, of any expenses already incurred by the Agricultural Marketing Service in connection therewith.

53.12 Authority of agent.--Proof of the authority of any person making an application or a request for service under the regulations on behalf of any other person may be required at the discretion of the Chief or the official in charge of the office of grading or other employee receiving the application or request under sec. 53.8.

53.13 Denial or withdrawal of service.

(a) For misconduct.--(1) Bases for denial or withdrawal.--An application or a request for service may be rejected, or the benefits of the service may be otherwise denied to, or withdrawn from, any person who, or whose employee or agent in the scope of his employment or agency, (i) has wilfully made any misrepresentation or has committed any other fraudulent or deceptive practice in connection with any application or request for service under the regulations; (ii) has given or attempted to give, as a loan or for any other purpose, any money, favor, or other thing of value, to any employee of the Department authorized to perform any function under the regulations; (iii) has interfered with or obstructed, or attempted to interfere with or to obstruct, any employee of the Department in the performance of his duties under the regulations by intimidation, threats, assaults, abuse, or any other improper means; (iv) has knowingly falsely made, issued, altered, forged, or counterfeited any official certificate, memorandum, mark, or other identification, or device for making any such mark or identification; (v) has knowingly uttered, published, or used as true any such falsely made, issued, altered, forged, or counterfeited certificate, memorandum,

mark, identification, or device; (vi) has knowingly obtained or retained possession of any such falsely made, issued, altered, forged, or counterfeited certificate, memorandum, mark, identification, or device, or of any such official device, or of any product bearing any such falsely made, issued, altered, forged, or counterfeited mark or identification, or of any carcass or wholesale or retail cut bearing any designation specified in subdivision (vii) of this subparagraph which has not been federally graded or derived from a carcass graded as being of the indicated grade; (vii) has applied the designation "Prime," "Choice," "Good," "Standard," "Commercial," "Utility," "Cutter," "Canner," "Cull," "Medium," "No. 1," "No. 2," or "No. 3" by stamp or brand directly on any carcass or wholesale or retail cut of any carcass, as part of a grade designation or otherwise; or (viii) has in any manner not specified in this paragraph violated subsection 203(h) of the Act: Provided, That subdivision (vi) of this subparagraph shall not be deemed to be violated if the person in possession of any item mentioned therein notifies the Chief without delay that he has possession of such item and, in the case of an official device, surrenders it to the Chief, and, in the case of any other item, surrenders it to the Chief or destroys it or brings it into compliance with the regulations by obliterating or removing the violative features under supervision of the Chief: And provided, further, That subdivisions (ii) through (vii) of this subparagraph shall not be deemed to be violated by any act committed by any person prior to the making of an application for service under the regulations by the principal person to whom service would be denied in any case. An application or a request for service may be rejected, or the benefits of the service may be otherwise denied to, or withdrawn from, any person who operates an establishment for which he has made application for service if, with the knowledge of such operator, any other person conducting any operations in such establishment has committed any of the offenses specified in subdivisions (i) through (viii) of this subparagraph after such application was made. Moreover, an application or a request for service made in the name of a person otherwise eligible for service under the regulations may be rejected, or the benefits of the service may be otherwise denied to, or withdrawn from, such a person (a) in case the service is or would be performed at an establishment operated (1) by a corporation, partnership, or other person from whom the benefits of the service are currently being withheld under this paragraph, or (2) by a corporation, partnership, or other person having an officer, director, partner, or substantial investor from whom the benefits of the service are currently being withheld and who has any authority with respect to the establishment where service is or would be performed, or (b) in case the service is or would be performed with respect to any product in which any corporation, partnership, or other person within (a) (1) of this subdivision has a contract or other financial interest.

(2) Procedure.--All cases arising under this paragraph shall be reported to the Director, for informal settlement of the controversy if possible. If the efforts at informal settlement are not successful, the matter shall be reported to the Administrator who will make the final determination as to the action to be taken, after opportunity for hearing before a proper official in the Department is accorded the persons involved. The final order denying or withdrawing the benefits of the service under the regulations may

also deny or withdraw any or all other benefits under the Act and similar voluntary inspection services provided by the Department under other authorities. In any case under this paragraph, the official in charge of the appropriate office of grading may, with the concurrence of the Chief, deny or withdraw service under the regulations, without hearing, pending efforts at informal settlement and final determination in accordance with this paragraph. Notice of any denial or withdrawal of service under this paragraph, and the reasons therefor, shall promptly be given to the persons involved.

(b) For miscellaneous reasons.--An application or a request for service may be rejected, or the benefits of the service may be otherwise denied to, or withdrawn from, any person, without a hearing, by the official in charge of the appropriate office of grading, with the concurrence of the Chief (1) for administrative reasons such as the nonavailability of personnel to perform the service; (2) for the failure to pay for service; (3) in case the application or request relates to products which are not eligible for service under sec. 53.5, or which are unclean or are in an unclean establishment; (4) for other noncompliance with the conditions on which service is available as provided in the regulations, except matters covered by paragraph (a) of this section; or (5) in case the person is a partnership, corporation, or other person from whom the benefits of the service are currently being withheld under paragraph (a) of this section. Notice of such denial or withdrawal, and the reasons therefor, shall promptly be given to the person involved.

(c) Filing of records.--The final orders in formal proceedings under paragraph (a) of this section to deny or withdraw the service under the regulations (except orders required for good cause to be held confidential and not cited as precedents) and other records in such proceedings (except those required for good cause to be held confidential) shall be filed with the Hearing Clerk and shall be available for inspection by persons having a proper interest therein.

53.14 Financial interest of official grader.--No official grader shall grade or determine compliance of any products in which he or any of his relatives by blood or marriage is directly or indirectly financially interested.

53.15 Accessibility and refrigeration of products; access to establishments.

(a) The applicant shall cause the products, with respect to which service is requested, to be made easily accessible for examination and to be so placed, with adequate illuminating facilities, as to disclose their class, grade, other quality, and compliance. Supervisors of grading and other employees of the Department responsible for maintaining uniformity and accuracy of service under the regulations shall have access to all parts of establishments covered by approved applications for service under the regulations, for the purpose of examining all products in the establishments which have been or are to be graded or examined for compliance with specifications or which bear any marks of grade or compliance.

(b) Grading service will be furnished for meat in carcass form or wholesale cuts only if properly chilled. Determination of class, grade, or other quality of carcass meat or wholesale cuts of meat under the standards in Subpart B of this part will not be made if such carcass meat or wholesale cuts are in a frozen state.

53.16 Official certificates.

(a) Required; exception.--The official grader shall prepare, sign, and issue official certificates covering products graded by

(b) Form.--(1) The following constitutes a form of official certificate for products under the regulations:

No.
MEAT GRADE CERTIFICATE

Service Performed in Cooperation with The National Live Stock and Meat Board.

[illegible]

WEIGHTS NOT VERIFIED



Where the service rendered is or includes acceptance service, the word "Grade" shall be deleted from the heading "Meat Grade Certificate." Where weight is certified, the word "Not" shall be deleted from the phrase "Weights Not Verified."

(2) Where determination of ingredient content or method of preparation of products in acceptance service is based upon a certification of the facts by the inspection system having jurisdiction of the products, this fact shall be stated on the certificate.

(c) Distribution.--The original certificate and not to exceed two copies shall be delivered or mailed to the applicant or other person designated by him. One copy shall be filed in the office of the official grader, and one copy shall be forwarded to a central office designated by the Chief, and such copies shall be kept on file until other disposition is ordered by the Administrator. Additional copies will be furnished to any person financially interested in the products involved upon the payment of fees as provided in sec. 53.29(g).

53.17 Advance information concerning service rendered.--Upon request of any applicant, all or any part of the contents of any certificate issued to him under the regulations, or other notification concerning the determination of class, grade, other quality, or compliance of products for such applicant may be transmitted by telegraph or telephone to him, or to any person designated by him, at his expense.

53.18 Marking of products.--All products for which class and grade under the standards in Subpart B of this part, or compliance, is determined under the regulations, or the immediate and shipping containers thereof, shall be stamped, branded, or otherwise marked with an appropriate official identification: Provided, That except as otherwise directed by the Chief, such marking will not be required when an applicant only desires official certificates. The marking of products, or their containers, as required by this section shall be done by official graders or under their immediate supervision.

53.19 Official identifications.

(a) A shield enclosing the letters "USDA" as shown below, with the appropriate grade designation "Prime," "Choice," "Good," "Standard," "Commercial," "Utility," "Cutter," "Canner," or "Cull," as provided in the standards in Subpart B of this part, also enclosed in the shield, and accompanied when necessary by the class designation "Stag," "Bull," "Veal," "Calf," "Yearling Mutton" or "Mutton," constitutes a form of official identification under the regulations to show the grade, and where necessary the class, under said standards, of steer, heifer and cow beef, stag beef, bull beef, veal, calf, lamb, yearling mutton, and mutton.



(b) The following constitute forms of official identifications under the regulations to show compliance of products:



FIGURE 1.



FIGURE 2.



FIGURE 3.



FIGURE 4.

The date, location, and letters "DN" and "AC" shown in figures 2, 3, and 4 are examples, respectively, of the date and place of service and the code identification of the grader performing the service.

53.20 Custody of identification devices.--All identification devices used in marking products or the containers thereof under the regulations, including those indicating compliance with specifications approved by the Chief, shall be kept in the custody of the Branch, and accurate records shall be kept by the Branch of all such devices. Each office of grading shall keep a record of the devices assigned to it. Such devices shall be distributed only to authorized employees of the Branch who shall keep the devices in their possession or control at all times and maintain complete records of such devices.

APPEAL SERVICE

53.21 What is appeal service; marking products on appeal; requirements for appeal; certain determinations not appealable.

(a) Appeal service is a redetermination of the class, grade, other quality, or compliance of product when the applicant for the appeal service formally challenges the correctness of the original determination. Only a person who has title to, or is a party to a contract for the sale of, a product may request appeal service with respect to such product and if the original determination of class, grade, other quality or compliance is found on appeal to have been in error all incorrect marks of class, grade, other quality and compliance will be removed from the product, and if the person having title to the product so requests, correct marks as determined on the appeal

will be applied to the product. Examination requested to determine the class, grade, other quality, or compliance of a product which has been altered or has undergone a material change since the original service, or examination of product requested for the purpose of obtaining an up-to-date certificate and not involving any question as to the correctness of the original service for the product involved, shall be considered equivalent to original service and not appeal service.

(b) Grade determinations for the following cannot be appealed: any lot of a product consisting of less than ten similar units; wholesale cuts, or other subdivisions of meat originally graded as larger units; and veal and calf carcasses originally graded with hides on. Moreover, appeal service will not be furnished with respect to product that has been altered or has undergone any material change since the original service.

53.22 Request for appeal service.--Except as otherwise provided in sec. 53.21, a request for appeal service with respect to any product under the regulations may be made by any person who is financially interested in the product when he disagrees with the determination as to class, grade, other quality, or compliance of the product as shown by the markings on the product or its containers, or as stated in the applicable certificate. A request for appeal service shall be filed with the Chief, directly or through the official grader who performed the original service or the official in charge of the office of grading to which such grader was assigned at the time of the service, or through the nearest office of grading. The request shall state the reasons therefor and may be accompanied by a copy of any previous certificate or report, or any other information which the applicant may have received regarding the product at the time of the original service. Such request may be made orally (including by telephone) or in writing (including by telegram). If made orally, the person receiving the request may require that it be confirmed in writing. Requests for appeal service received through an official grader or an office of grading shall be transmitted promptly to the Chief for instructions.

53.23 When request for appeal service may be withdrawn.--A request for appeal service may be withdrawn by the applicant at any time before the appeal service has been performed, upon payment of any expenses already incurred under the regulations by the Branch in connection therewith.

53.24 Denial or withdrawal of appeal service.--A request for appeal service may be rejected or such service may be otherwise denied to or withdrawn from any person, without a hearing, in accordance with the procedure set forth in sec. 53.13(b), if it shall appear that the person or product involved is not eligible for appeal service under sec. 53.21, or that the identity of the product has been lost; or for any of the causes set forth in sec. 53.13(b). Appeal service may also be denied to, or withdrawn from, any person in any case under sec. 53.13(a), in accordance with the procedure set forth in said section.

53.25 Who shall perform appeal service.--Appeal service for products shall be performed by official graders designated by the Chief or by the official in charge of an office of grading when so authorized by the Chief, and shall be conducted jointly by two official graders, or more when practicable. No official grader shall perform appeal service for any product for which he previously performed the service.

53.26 Appeal certificates.--Immediately after appeal service has been performed for any products, a certificate designated as an "appeal certificate" shall be prepared, signed, and issued referring specifically to the original certificate and stating the class, grade, other quality, or compliance of the products as shown by the appeal service.

53.27 Superseded certificates.--The appeal certificate shall supersede the original certificate which, thereupon, shall become null and void and shall not thereafter be deemed to show the class, grade, other quality, or compliance of the products described therein. However, the fees charged for the original service shall not be remitted. If the original and all copies of the superseded certificate are not delivered to the official with whom the request for appeal service is filed, the official graders issuing the appeal certificate shall forward notice of such issuance and of the cancellation of the original certificate to such persons as they may deem necessary to prevent fraudulent use of the superseded certificate.

53.28 Application of other regulations to appeal service.--The regulations in secs. 53.1 through 53.20 and secs. 53.29 through 53.32 shall apply to appeal service except insofar as they are manifestly inapplicable.

CHARGES FOR SERVICES

53.29 Fees and other charges for service.--Fees and other charges equal as nearly as may be to the cost of the services rendered shall be assessed and collected from applicants in accordance with the following provisions unless otherwise provided in the co-operative agreement under which the services are furnished, or as provided in sec. 53.8.

(a) Fees based on hourly rates.--Except as otherwise provided in this section, fees for service shall be based on the time required to render the service, calculated to the nearest 15 minute period, including the time required for the preparation of certificates and travel of the official grader in connection with the performance of the service, and shall be at the base rate of \$6.00 per hour for work performed on days other than Sundays or legal holidays; and at one and one-half times the base rate for work performed on Sundays, and at double the base rate for work performed on legal holidays. A minimum charge for one-half hour shall be made for service pursuant to each request notwithstanding that the time required to perform the service may be less than thirty minutes.

(b) Fees for service on weekly commitment basis.--Minimum fees for service performed under a weekly commitment shall be on the basis of 40 hours of work on days other than Sundays or legal holidays calculated at the base rate in accordance with paragraph (a) of this section. Hours worked in excess of such 40 hours will be charged at the same base rate, except charges will be made for work performed on Sundays and legal holidays as stated in paragraph (a) of this section. The Agricultural Marketing Service reserves the right under such a commitment to use any grader assigned to the plant on a weekly basis to perform service for other applicants as provided in sec. 53.8(c), crediting the commitment applicant with the number of hours charged to the other applicants, provided the allowable credit hours, plus hours actually worked for the applicant, do not exceed 40 in any week.

(c) Travel charges.--(1) When service is requested at a place so distant from an official grader's headquarters or place of prior assignment on a circuit routing, that a total of one-half hour or more is required for the grader to travel to such place and back to the headquarters or to the next place of assignment on a circuitous routing, the charge for such service shall include a mileage charge at 8 cents per mile, and travel tolls if applicable, for such travel prorated against all the applicants furnished the service involved on an equitable basis, or, where the travel is made by public transportation (including hired vehicle), a fee equal to the actual cost thereof.

(d) Per diem charges.--When service is requested at a place so distant from an official grader's headquarters that the work and travel required for such service cannot be performed within a calendar day, the fee for such service shall include a per diem charge, at the rate paid the grader which shall not exceed \$12.00 per diem, for each full day or quarter portion of a day spent by the grader away from his headquarters in the performance of such work and travel. A fee of \$3.00 shall be charged for such work and travel although the time spent therein is less than a quarter portion of a day.

(e) Charges to applicants for recognition of nonfederally inspected establishments.--(1) The initial survey conducted to determine the eligibility of a nonfederally inspected establishment for service under sec. 53.7 shall be without cost to the applicant when the survey is made at the convenience of the Chief. Fees shall be charged, as provided in subparagraph (2) of this paragraph, (i) when the applicant requests in writing that a special trip be made to conduct the initial survey, and such survey is conducted within 30 days from receipt of such request; (ii) when any survey subsequent to the initial one is required by the Chief to determine whether the establishment meets the specific requirements for recognition of which it has been previously notified as a result of the initial survey, such survey is made within 2 years after the initial survey, and there has been no change in ownership of the establishment since the initial survey; or (iii) when a survey is conducted to determine the eligibility for recognition of an establishment the recognition of which has been withdrawn under sec. 53.6 or sec. 53.7 or at which service has been denied or withdrawn under 53.13(a).

(2) A fee at the applicable hourly rate calculated in accordance with paragraph (a) of this section shall be charged for time spent by an authorized official in making any survey for which fees are required to be charged under subparagraph (1) of this paragraph, including time spent in traveling to the establishment from his normal route of assignment and return. In addition, there shall be a travel charge for such travel and a per diem charge for each day, or quarter portion thereof, spent by such official away from his headquarters in the performance of such survey, including travel, at the rates provided for in paragraphs (c) and (d) of this section.

(3) In no case shall the total fees chargeable under subparagraph (2) of this paragraph for any such survey be less than \$15.00.

(f) Fees for appeal service.--Fees for appeal service shall be determined on the basis of the time, of two official graders, required to render the service, calculated to the nearest fifteen minute period, including the time required for the preparation of certificates and travel of such graders in connection with the performance of the service, at the applicable hourly rate prescribed

in paragraph (a) of this section, plus any travel charges and per diem for such graders ordinarily chargeable under paragraphs (c) and (d) of this section: Provided, That when on appeal it is found that there was error in the original determination equal to or exceeding ten percent of the total number of similar units of the products involved, no charge will be made for the appeal service unless a special agreement therefor was made with the applicant in advance.

(g) Fees for extra copies of certificates.--In addition to copies of certificates furnished under sec. 53.16, any financially interested person may obtain not to exceed three copies of any such certificate within one year from its date of issuance upon payment of a fee of \$1.00, and not to exceed three copies of any such certificate at any time thereafter, while a copy of such certificate is on file in the Department, upon payment of a fee of \$5.00.

53.30 Payment of fees and other charges.--Fees and other charges for service shall be paid in accordance with the following provisions unless otherwise provided in the cooperative agreement under which the service is furnished. Upon receipt of billing for fees and other charges for service the applicant shall remit by check, draft, or money order, made payable to the Agricultural Marketing Service, U.S.D.A., payment for the service in accordance with directions on the billing, and such fees and charges shall be paid in advance if required by the official grader or other authorized official.

MISCELLANEOUS

53.31 Identification.--All official graders and supervisors of grading shall have their Agricultural Marketing Service identification cards in their possession at all times while they are performing any function under the regulations and shall identify themselves by such cards upon request.

53.32 Errors in service.--When an official grader, supervisor of grading, or other responsible employee of the Branch has evidence of misgrading, or of incorrect certification or other incorrect determination or identification as to the class, grade, other quality, or compliance of a product, he shall report the matter to his immediate supervisor. The supervisor of grading will investigate the matter and, if he deems advisable, will report it to the owner or his agent. The supervisor of grading shall take appropriate action to correct errors found in the determination or identification of class, grade or other quality or compliance of products if the products are still owned by the person who owned them when, and are still located at the establishment where, the incorrect service was rendered and if such service was rendered by a grader under the jurisdiction of such supervisor, and the supervisor of grading shall take adequate measures to prevent the recurrence of such errors.